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Supreme Court of the United States

OCTOBER TERM—1925.

No. 10[redacted]34.

MIDDLETON S. BORLAND, as Trustee in Bankruptcy of Knauth, Nachod & Kuhne,

Petitioner,

against

CARL BOCHLING, et al., trading as Gebrueder Bochling,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

GODFREY GOLDMARK,
Counsel for Petitioner,
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New York City.

Corporate Printing Co., 76½ Pine Street, New York City.

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PETITION.

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Supreme Court of the United States

OCTOBER TERM—1925.

MIDDLETON S. BORLAND, as Trustee in Bankruptcy of Knauth, Nachod & Kuhne, *Petitioner,* against CARL ROCHLING, et al., trading as GEBRUEDER ROCHLING, *Respondents.*	Petition for Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Middleton S. Borland, as Trustee in Bankruptcy of Knauth, Nachod & Kuhne, respectfully shows:—

I.

Nature of Proceeding and Decision Below.

In the bankruptcy proceeding of Knauth, Nachod & Kuhne, an order of the United States District Court for the Southern District of New York confirming a Special Master's report disallowing a reclamation claim of the above respondents, Gebrueder Rochling, was reversed by the Circuit Court of Appeals for the Second Circuit and the reclamation claim allowed. The reclamation claim was to recover $60,000, the proceeds of two checks, which, it was alleged, had been traced into the possession of your petitioner as trustee in bankruptcy.

A reclamation petition, involving a similar question, was filed in the same proceeding by the Austrian banking house of N. Latzko and A. Popper, and cross-petitions for certiorari to review the decision of the Circuit Court of Appeals in that case is being presented by both the Trustee and the Claimant therein simultaneously herewith.

II.

Question of General Law Involved.

These cases involve an important question of general law. The question may be thus stated:

A. is a depositor having an account with *B.*, a bank.

A. instructs another bank, *C.* "to procure" a sum of money for *A.* at the *B.* bank on a given date.

Pursuant thereto and on said date, the *C.* bank delivers to the *B.* bank, the *C.* bank's cashier's check, for the amount in question, drawn to the order of the *B.* bank "for account of" *A.*

The amount of such check is forthwith credited to *A.'s* account with the *B.* bank, and in accordance with the well established practice between *A.* and *B.*, *A.* receives interest on the amount credited from the said date of the delivery of the check.

Question—In the absence of any special agreement between *A.* and the *B.* bank, does the *B.* bank under the above circumstances purchase the check and acquire title thereto and immediately become the debtor of *A.*, its depositor, or does the *B.* bank take the check merely as agent for collection, so that the proceeds of such check, if received by the *B.* bank after its bankruptcy, belong to *A.*, the depositor, and not to the Trustee in Bankruptcy?*

The Circuit Court of Appeals held in this case that the

* The facts of the present case appear in detail at page 8 of the annexed Brief.

bankrupts, who were the *B.* bank aforesaid, took a check as agents solely for collection where the check *on its face* was made payable to the bankrupts "for account of" *A.* (the respondents), and that, accordingly, where the check had not passed through the New York Clearing House until after the filing of the petition in bankruptcy, the Trustee in Bankruptcy held the proceeds as agent for the respondents and was obligated to pay such proceeds to the respondents as against general creditors.

In the *Latzko* case above referred to, in which a petition for a Writ of Certiorari is also being submitted, one of the checks was payable to the order of the bankrupts without more on its face but was *accompanied* by a communication that the check was "for account of" Latzko & Popper. In *that case,* the Circuit Court of Appeals held that the bankrupts took absolute title to the check and were not merely collection agents for Latzko & Popper.

The correctness of the decisions on both the Latzko and Rochling claims depends upon whether the doctrine of *White* v. *Miners National Bank,* 102 U. S. 658 applies, or whether, per contra, the use of the words "for account of" under the circumstances of the present case is not to be deemed a limitation but merely a designation of the account to be credited, thus amounting to an ordinary deposit within the principle of the well known case of *Burton* v. *United States,* 196 U. S., 283.

In the *Burton case,* it was held that where a depositor deposits a check of third parties with his bank and his account is credited therewith, the bank, in the absence of a special agreement to the contrary, is to be deemed a purchaser of the check and not a mere agent for its collection, with the result that from the moment of deposit the bank becomes a debtor to the depositor. In the *White* case it was said that where the payee of a draft *endorses* such draft to another person (not a bank) "for account of the payee", such other person is merely an agent for collection and not a purchaser of the instrument.

The Circuit Court of Appeals applied the doctrine of the *Burton* case to the situation arising in the *Latzko* claim and held the bankrupts there purchasers of the check, but refused to apply the *Burton* doctrine, and, on the contrary, applied the doctrine of the *White* case to the checks in the *Rochling* claim, because the words "for account of" appeared on the face of the check rather than in the accompanying instructions.

III.

Importance of the Question Presented.

Your petitioner submits that the questions presented are of great importance to the banking and commercial world, for the reason that banks throughout the country are daily receiving innumerable checks and drafts, domestic and foreign, to the order of such banks "for the account" of their depositors. Such transactions are constantly had as a means of making funds available at various points throughout the country, and your petitioner submits that it is of importance to have it determined authoritatively whether a bank receiving a check of another bank to the order of such first bank "for account of" a depositor of the first bank, is any the less a purchaser of such check or draft than it is where the depositor himself deposits a check for the credit of his own account. Your petitioner submits that this Court itself has recognized the great importance of commercial transactions of this character when, in discussing the effect of the words "for account of" in the *White* case it refrained from determining the effect of these words and said at page 661:

> "But we are aware of the necessity of proceeding with great caution in a case of first impression in regard to questions affecting commercial transactions, and we do not, therefore, decide this one, because we do not think it absolutely necessary to the case."

IV.

Errors of the Circuit Court of Appeals.

Your petitioner submits that the conclusions reached by the Circuit Court of Appeals are untenable for two distinct reasons:

A.

The sole holding of the *White* case is that where the payee of a draft endorses the same to another person for account of the payee, that other person, the endorsee, receives the draft and collects it as agent and does not purchase the instrument. In the *White* case the endorsee, however, was not a bank and the endorsor had no "account" with the endorsee, for which "account" the endorsee could receive the check and to which its amount could be credited. In the present case, on the other hand, the recipient of the check is a bank with which the person for whose account the check was received had a general checking account, to which account it was the intention of all the parties that the proceeds of the check be credited. Furthermore, in the present case, the holding below results in the conclusion that the drawer or transmitting bank made the bankrupts its agents to collect the *drawer* bank's own check from *the drawer bank itself*—a wholly impossible result. Accordingly, it is obvious that the sole purpose of the words "for account of" in either the check or any accompanying instructions was to inform the bank which was the payee of the check whose account with it was to be credited with the amount of the check.

B.

In holding the bankrupts agents in the *Rochling* case where the words "for account of" appear on the face of the check, and in holding the bankrupts purchasers where

the same words appear in the accompanying instructions, the Court below erred because it wholly overlooked the fact that the reclamation claims here in both cases are presented by the respective *depositors* of the bank and are not claims by subsequent holders of the checks whose knowledge of the transaction is based wholly upon the form of the check and who would have taken such check subject only to the notice appearing thereon.

Your petitioner submits that as between the parties it is not the form of the checks but the actual arrangement between the depositor and the bank which must control in determining whether or not the bank is constituted the agent to collect the check, or whether it is a purchaser within the doctrine of the *Burton* case. Your petitioner submits further, that in the absence of other circumstances, the doctrine of the *Burton* case is as equally applicable to the facts here presented as to the ordinary case where the depositor himself rather than an agent bank deposits a check and is forthwith given credit therefor, with the result that the depositary bank becomes a purchaser forthwith.

Wherefore, in view of the fact that the decision below is untenable and that the important questions presented should be settled by this Court, your petitioner respectfully prays that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to the Judges of the United States Circuit Court of Appeals for the Second Circuit, demanding them to certify and send to this Court a transcript of the records and proceedings in this case, to the end that the decree of said Court may be reviewed, and that your petitioner may have such other and further relief in the premises as to this Court may seem appropriate.

MIDDLETON S. BORLAND,
As Trustee in Bankruptcy of
Knauth, Nachod & Kuhne.

by Godfrey Goldmark
Counsel

State of New York,
County of New York, } ss.:

GODFREY GOLDMARK, being duly sworn, deposes and says as follows:

I am counsel for Middleton S. Borland, Trustee in Bankruptcy of Knauth, Nachod & Kuhne. I have read the foregoing petition and the same is true to my personal knowledge. The reason that this verification is made by me and not by said Borland is that the said Borland is at this time seriously ill and unable to transact any business or verify this petition.

GODFREY GOLDMARK.

Sworn to before me this
22nd day of March, 1926.

JOHN E. MCGUIRK,
Notary Public, Bronx County.
Certificate filed in New York County.

Certificate of Counsel.

I hereby certify that I have examined the foregoing petition and in my opinion it is well founded and the case is one in which the prayer of the petitioner should be granted by this Court.

GODFREY GOLDMARK,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

MIDDLETON S. BORLAND, as Trustee in Bankruptcy of Knauth, Nachod & Kuhne,
Petitioner,
against
CARL ROCHLING, et al., trading as GEBRUEDER ROCHLING,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Facts.

The bankrupts were international bankers. The respondents were a private German bank and maintained a general account with the bankrupts at the time of the bankruptcy and for some time prior thereto (fols. 120-122).

The National Bank of Commerce Check.

On May 4, 1923, respondents purchased from Lloyd's Bank, Ltd., $30,000 payable in New York on June 15, 1923; and on June 11, 1923, respondents wrote to Lloyd's Bank, Ltd., and requested that bank "to procure this amount" ($30,000) "for us at Knauth, Nachod & Kuhne, New York" on June 15, 1923 (fols. 64-69, 159, 150).

Lloyd's Bank, Ltd., thereupon instructed the National Bank of Commerce in New York as follows (fol. 150):

> "Pay 30,000 value fifteenth to Knauth, Nachod & Kuhne, New York, for account of Rochling Bank, Gebt. Frankfort-on-Main."

Pursuant thereto and on June 15, 1923, during banking hours, the National Bank of Commerce delivered to the bankrupts its *Cashier's check* for $30,000 payable to the order of bankrupts "for account of Rochling Bank, Gebt. Frankfort-on-Main" (fol. 150). Bankrupts gave to the National Bank of Commerce a receipt for the check "for account of Rochling Bank, Gebt. Frankfort-on-Main, in accordance with instructions dated 6/11/23, received from London, England, Lloyd's Bank, Ltd." (fol. 153).

The National City Bank Check.

On May 15, 1923, respondents purchased from the Swiss Bank Corporation another $30,000 payable in New York on June 15, 1923; and on June 11, 1923, respondents wrote to Swiss Bank Corporation and requested that bank "to procure this amount" ($30,000) "for us at Knauth, Nachod & Kuhne, New York" on June 15, 1923 (fols. 85-90, 149-154).

The record does not show what, if any, instructions were given by the Swiss Bank Corporation to the National City Bank, but does show that on June 15, 1923, during the banking hours, the National City Bank delivered to the bankrupts its Cashier's check for $30,000 payable to the order of bankrupts, "a/c Gebr. Rochling, Frankfort A/M" (fol. 155). The form of receipt given by the bankrupts in this instance read: "Received from the National City Bank of New York $30,000 A/C Gebr. Rochling, Frankfort A/M" (fol. 155).

Steps Taken By Bankrupts Upon Receipt of the Checks.

On June 15, 1923 and immediately following the receipt by the bankrupts of the two checks, the bankrupts credited the account of the respondents for the amount of such checks. They also made an entry on their books that the respondents were entitled to interest on the $60,000 so credited from June 15, 1923 (fols. 117-119). The bank-

rupts on the same day—June 15th—deposited the National Bank of Commerce check with the Guaranty Trust Company where the bankrupts maintained a general checking account, and the amount of the check was on that day credited to the bankrupts' account (fol. 34). Likewise, on that day, the bankrupts deposited the National City Bank check with the American Exchange Bank where the bankrupts maintained a general checking account and the American Exchange Bank credited the bankrupts' account with the amount of said check forthwith upon its deposit (fol. 49).

Course of Dealing Between the Parties.

For several years prior to June 15, 1923, the bankrupts had received checks from New York banking institutions "for the account" respondents under circumstances substantially the same as just outlined in connection with the National Bank of Commerce and National City Bank checks (fol. 137). In all such instances checks so received were treated as cash deposits and respondents' account on the books of the bankrupts was credited forthwith on the receipt of such checks with the amounts thereof, and interest was allowed respondents on such deposits from the dates of the credits (fol. 38). This practice was known to, and acquiesced in, by respondents. They periodically received statements from the bankrupts showing that in all cases credits had been given upon receipt of checks and interest allowed from the dates of the credits. These statements rendered to respondents by the bankrupts were accepted by respondents without question (fols. 159-160).

Payment of the Checks to the Receiver in Bankruptcy.

The bankruptcy petition was filed in the Clerk's office on the morning of June 16, 1923, and on that day, the checks of the National Bank of Commerce and of the National City Bank were paid respectively to the Guaranty Trust

Company and to the American Exchange National Bank through the New York Clearing House. Thereafter, the Guaranty Trust Company and the American Exchange Bank liquidated collateral loans and returned the surplus to the receiver (fols. 54, 55). It is against these funds that the respondents assert their reclamation rights on the ground that the surplus includes the proceeds of the two checks in question which were collected and held by the Receiver as agent for the respondents.

POINT I.

The words "for account of" Rochling appearing on the face of the checks were a mere designation of the "Account" on the Bankrupts' books to be credited and were not restrictive words making the Bankrupts merely the agents of the drawer banks for collection from themselves.

The substance of the argument below was that the words "for account of" Rochling appearing on the face of the checks are restrictive words, having the same effect as though the checks had been endorsed for collection, and that as a result, title to the checks did not pass to the bankrupts on June 15th.

This argument was based upon a line of cases which hold that an *endorsement* by a payee to a third party "for collection" or "for account of" is restrictive and constitutes the endorsee an agent merely for collection.

The error in this argument lies in the assumption that these cases are applicable to the situation here presented and that the words "for account of" as used on the checks here under consideration were intended to have the same meaning, despite the fact that it appears that the Rochlings had a checking account with the bankrupts and desired a credit on June 15th, the day upon which the checks were received by the bankrupts.

It is submitted that in the light of the situation here presented, the natural and reasonable interpretation of the words "for account of" completely negatives the construction adopted below and affirmatively shows that the words were used merely as an identification of the account on the bankrupts' books which was to be credited, and that the intention of all the parties was that the checks were received as cash deposits.

While there are numerous cases holding that an *endorsement* "for collection" or "for account of" a third party is restrictive, the main authority relied upon is the decision of this Court in *White* v. *National Bank,* 102 U. S., 658.

In the *White* case, the defendant bank, by its president, J. L. Brownell, endorsed drafts to the plaintiff White, in the following manner:

> "Pay S. V. White or order for account Miners' National Bank, Georgetown, Colorado. J. L. Brownell, p't."

Brownwell received from White for the use of the bank the amount of the drafts less a discount. The drafts not having been paid at maturity, White sued the bank both as endorser and for money paid by him to the use of the bank.

This Court *decided* that the plaintiff might recover for money paid to the defendant's use. In *commenting* upon the form of the endorsement, however, Mr. Justice MILLER, writing for the Court, said at page 661:

> "It seems to us that the court below correctly construed the effect of the endorsement to be to make White the agent of the bank for the collection of the money."

It is upon this *dictum* that respondents rely so greatly. But in the *White* case the defendant had no bank account with White for which "account" White received the drafts and to which "account" the amounts of the drafts were to

be credited. Moreover, the drafts were drawn on third parties, and endorsed to White by the bank for its own account. The natural and reasonable construction of the endorsement was that the bank had constituted White an agent to collect the drafts from the third parties. That White was cognizant of this appears quite clearly from the fact that he did not seek to *explain* the words, his only effort being to *contradict them and deny them any meaning* through parole proof of a separate and distinct agreement alleged to have been made at the time of the endorsement and transfer of the drafts (see page 660 of the opinion).

In the present case there is no such attempt to disregard the words "for account of" or to deny them meaning. Petitioner's position on the contrary is that when the words are interpreted in the light of the circumstances attendant upon the delivery of the checks to the bankrupts, it clearly appears that the words were nothing more than a designation of "the account" on bankrupts' books entitled to be credited—an every day transaction.

Here respondents had an ordinary checking account with the bankrupts. The checks in question were delivered to the bankrupts, not by respondents, but by third parties, the National Bank of Commerce and the National City Bank. The bankrupts would not have known which account on their books was to be credited with the amounts of the checks unless the banks had notified them in that regard at the time of the making of the deposits. Moreover, here the checks were not drawn on third parties *but were cashier's checks drawn on the banks themselves.* In the case of the National Bank of Commerce check, the words "for account of" were part of the printed matter (fol. 72), thus making more obvious the fact that this was a stereotyped form for purposes of identification and not contemplated as a basis for a special agreement restricting the negotiability of the paper. The situation was wholly dissimilar from that in the *White* case where this Court

because of the commercial importance of the question, refrained from unnecessarily passing on the effect of the words "for account of."

To hold under the present circumstances that the words "for account of" were used to give the bankrupts necessary information as to the account on their books to be credited, is reasonable and intelligent. To hold that the words made the bankrupts agents to collect, is to place upon those words an unreasonable and unnatural construction, for *any such construction would mean that the very banks instructed to pay monies to the bankrupts for the respondents had constituted the bankrupts their agents to collect those very same monies from the banks themselves. A far-fetched and unwarranted interpretation wholly contrary to established commercial practices.*

Furthermore there is one further important set of facts present in the case at bar which shows conclusively that the National Bank of Commerce and the National City Bank did not intend to constitute the bankrupts agents to collect. Appellants' instructions to Lloyds Bank, Ltd., and to the Swiss Bank Corporation were, in each instance, *"to procure" $30,000 for appellants at Knauth, Nachod & Kuhne on June 15, 1923* (fol. 67, 88). What instructions Swiss Bank Corporation gave to the National City Bank, appellants failed to show. But they did introduce into evidence the instructions from Lloyds Bank, Ltd., to the National Bank of Commerce. Those instructions were as follows (fol. 70):

> *"Pay* 30,000 value *fifteenth* to Knauth, Nachod & Kuhne New York for account of Rochling Bank Gebt. Frankfort-on-Main."

And bankrupts' acknowledgment of receipt of the National Bank of Commerce check acknowledges receipt thereof "in accordance with" said instructions (fol. 79). Presumably similar instructions went forward from Swiss Bank Corporation to the National City Bank.

In other words respondents as is usually the case had contracted for *money to be placed at their disposal with the bankrupts on June 15th* and the New York banks had been instructed *to pay said sums of money to the bankrupts on June 15th.* It was the intention of the respondents to obtain *credits with the bankrupts on June 15th.* The duty of the New York banks was to fulfill the obligations of their correspondents, Lloyd's Bank, Ltd., and Swiss Bank Corporation, namely, to establish the *credits* desired by the respondents. It was not their duty nor did they have any authorization to deposit a check for collection by the bankrupts. Their obligations was to *pay on a day certain*—June 15th, 1923. Accordingly, on June 15th, the banks presented their Cashier's checks to the bankrupts and at the same time identified the particular account to which the amounts of the checks were to be credited. They said in effect to the bankrupts: "We are instructed to pay you $30,000 today for the account of appellants. Here is our cashier's check to accomplish that purpose." And the only way such tender could accomplish payment on June 15th and thus secure for respondents *the very credit they had bargained for,* was through the *purchase of the checks by the bankrupts and the crediting forthwith of respondents account* on the bankrupts' books. Of course, the banks knew perfectly well that under well established banking practices that was exactly what would be done; that the bankrupts would, as indeed they did, treat the transaction as a cash deposit.

For the Court to construe these deposits as deposits for collection would be to construe the acts of the banks as a deliberate breach of instructions. But to construe the words "for account of" as an identification of the account to be credited, and hence not a bar to the purchase of the checks by the bankrupts, is to treat the acts of the banks as a compliance with their instructions and as a fulfillment of the contracts made by Lloyd's Bank, Ltd., and Swiss Bank Corporation with appellants. It is a con-

struction which gives respondents the credit with bankrupts on June 15, 1923, for which they bargained.

In this connection it is to be remembered that in determining whether or not the checks were deposited for collection, it is the intent of the depositors, *i. e.,* the banks, and the bankrupts, that is controlling.

As was said in *Fifth National Bank* v. *Armstrong,* 40 Fed., 46, at page 49:

> "The true criterion * * * is whether the depositor intended to part with title, and whether the receiving bank intended to purchase the paper, and assume the risk of payment, and give an absolute credit therefor, as in cases of discount."

The *White* case presents no set of circumstances such as those above outlined and analyzed. Its doctrine may be sound law when applied to cases resembling it in fact but it is wholly distinguishable from and completely inapplicable to the present situation. This Court, it is submitted, should authoritatively determine the soundness of the *dictum* contained therein and also its application to the facts here disclosed.

POINT II.

When the two cashier's checks were received by the Bankrupts on June 15th prior to the bankruptcy and Respondents' account credited with the amount thereof, title to the checks passed to the Bankrupts and the Respondents on that day became mere general creditors.

As it has been shown that the cashier's checks of the two banks were not delivered to the bankrupts "for collection" from the banks themselves, it must follow that the general rule laid down in *Burton* v. *United States,*

196 U. S., 283, is applicable, and that when the bankrupts received the checks and credited respondents' account, title to the checks passed to the bankrupts and the respondents became forthwith mere general creditors.

The Rule of the Burton Case.

In *Burton* v. *U. S.*, 196 U. S., 283, Burton had deposited a check in a bank where he had a general account and the bank had credited him with the amount of the check forthwith upon deposit. This Court squarely held that, in the absence of any special agreement to the contrary, title to the check passed to the bank upon delivery of the check and credit being given therefor. Mr. Justice PECKHAM writing for the Court said (at p. 297):

> *"There was no oral or special agreement made between the defendant and the bank at the time when any one of the checks was deposited and credit given for the amount thereof.* The defendant had an account with the bank, took each check when it arrived, went to the bank, indorsed the check which was payable to his order, and the bank took the check, placed the amount thereof to the credit of the defendant's account, and nothing further was said in regard to the matter. *In other words, it was the ordinary case of the transfer or sale of the check by the defendant and the purchase of it by the bank, and upon its delivery to the bank, under the circumstances stated, the title to the check passed to the bank and it became the owner thereof. It was in no sense the agent of the defendant for the purpose of collecting the amount of the check* from the trust company upon which it was drawn."

The New York courts have enunciated the same rule. In *Craige* v. *Hadley*, 99 N. Y., 131, Judge ANDREWS, speaking for the Court said (p. 133):

> "The general doctrine that upon a deposit being made by a customer in a bank in the ordinary course of business, of money, or of drafts or *checks received and credited as money,* the title to the money, or to the drafts or checks, is immediately vested in and becomes the property of the bank, is not open to question."

And in *Metropolitan National Bank* v. *Loyd,* 90 N. Y., 530, Judge DANFORTH, said at page 535:

> "It is true no express agreement was made transferring the check for so much money, but it was delivered to the bank and accepted by it and the bank gave Murray credit for the amount and he accepted it. That was enough. The property in the check passed from Murray and vested in the bank."

That the receipt of interest by the respondents on June 15th is inconsistent with the theory of a deposit "for collection" and is proof that the bankrupts purchased the checks and that the respondents were merely general creditors, appears from the following cases:

Upshur v. *Briscoe,* 138 U. S., 365, 375;
Pittsburg Nat'l Bank of Commerce v. *McMurray,* 98 Pa., 538;
Ames, *Cases on Trusts* (2nd Ed., 1893), page 33, note 1.

If the crediting on June 15th of the respondents' account by the bankrupts meant anything, it meant that the respondents were entitled, as a matter of right, to draw against the credit at any time. This is precisely the right which the respondents desired, for they had instructed Lloyds Bank in the one case and the Swiss Bank Corporation in the other case, "to procure this amount for us at Knauth, Nachod & Kuhne, New York, on June 15, 1923." There instructions were carried out in the usual

way, and the mere fact that the checks on their face indicated whose account was to be credited, can in no wise alter the rule laid down in the *Burton* and New York cases above referred to, which now has become the well recognized rule in the Federal and New York State Courts.

In the absence of any agreement to the contrary and in the light of the instructions, it is submitted that this rule is applicable here and that the court below erred in finding that the bankrupts took the checks as agents or fiduciaries, with the result that title did not pass prior to the bankruptcy. The rule of the *Burton* case has become well established and should in the absence of special agreement be held applicable to the every day banking transactions here involved.

POINT III.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

GODFREY GOLDMARK,
Counsel for Petitioner.

GODFREY GOLDMARK
GEORGE G. ERNST
RALPH F. COLIN
of Counsel.